

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5606 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOKA MILLS LTD

Versus

DAVID SHIVLAL

Appearance:

MR DG CHAUHAN for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/12/96

ORAL JUDGMENT

Heard learned counsel for the petitioner and perused the Special Civil Application.

2. The respondent No.1 was employed in the services of the petitioner on 26th April 1974 as "Badli Worker" and worked as "Badli Worker" till 1.5.81. He was made permanent on 1.5.81 and thereafter he was superannuated on 26.1.83. As the respondent No.1 has not completed

five years' service he was not entitled for any gratuity. He has not completed 24 days actual work when he was "Badli Worker except one year, i.e. 1979-80. The respondent No.1 has approached to the Controller Authority under the Payment of Gratuity Act, 1972. The Controller Authority under its order dated 29th August 1983, directed the petitioner to pay Rs.894.23 as Gratuity to the respondent No.1 for two complete years of service though the finding was given that he was not eligible for Gratuity. The petitioner has taken up the matter in appeal before the Appellate Authority which on merits confirmed the order of the Controlling Authority, but the later part of grant of relief to the respondent No.1 has also been confirmed. Hence this Special Civil Application.

3. I have gone through the order of the Controlling Authority as well as the Appellate Authority. Both the authorities have concurrently held that the respondent No.1 was not entitled for Gratuity as he has not completed five years' services. The findings which have been given by the Appellate Authority are as under:

"...There is no dispute also regarding the fact that the appellant was Badli workman till 1.5.81. Looking to the entire record, it is apparent that the appellant has completed only 240 days' service during two years. Therefore, according to the rules he does not become eligible for gratuity. Even if the year from the date of his confirmation i.e. 1.5.81 is taken into consideration as also the subsequent years during which period the service of 240 days is not completed, are taken into consideration, then also the period will be three years. Whereas, in fact the service of 240 days' days is completed during two years...."

So the benefit has been given by the authorities to the workman by way of mercy. Both the authorities below have committed error of jurisdiction in granting benefit to the respondent No.1 of Gratuity though as per Section 4(1) of the Payment of Gratuity Act, 1972, he was held to be not entitled.

4. In the result, this Special Civil Application succeeds and the same is allowed. The orders made by the Controlling Authority as well as the Appellate Authority, annexures 'B' & 'C', to this Special Civil Application, are quashed and set aside. Rule made absolute with no order as to costs.

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(sunil)